

Commissioners Minutes

August 31, 2023 – 1:35 p.m. to 3:38 p.m.

PUBLIC HEARING - SIERRA VISTA PROPERTIES/MINT FARM ESTATES - REZONE AND PRELIMINARY PLAT, IRRIGATION AND DRAINAGE PLAN, CASE NO. RZ2022-0011 & SD2022-0034

Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek

Deputy PA Zach Wesley

DSD Planning Official Dan Lister

DSD Planner III Deb Root

Derritt Kerner

Ammon Andelin

Andrea Roshalt

Darin Taylor

Shannon Colson

Allen Colson

Daniel Richards

Keri Smith

Deputy Clerk Monica Reeves

A handwritten signature in black ink that reads "Monica Reeves". The signature is written in a cursive style and is positioned above a horizontal line.

PUBLIC HEARING - SIERRA VISTA PROPERTIES/MINT FARM ESTATES - REZONE AND PRELIMINARY PLAT, IRRIGATION AND DRAINAGE PLAN, CASE NO. RZ2022-0011 & SD2022-0034

The Board met today at 1:35 p.m. for a continued public hearing to consider the request by Sierra Vista Properties, Inc., for a rezone of 90.75 acres from an "A" (Agricultural) zone to an "R-R" (Rural Residential) zone. If approved, the request includes a preliminary plat, irrigation, and drainage plan for Mint Farm Estates Subdivision, which contains 39 residential lots. Present were: Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek, Deputy PA Zach Wesley, DSD Planning Official Dan Lister, DSD Planner III Deb Root, Derritt Kerner, Ammon Andelin, Andrea Roshalt, Darin Taylor, Shannon Colson, Allen Colson, Daniel Richards, Keri Smith, and Deputy Clerk Monica Reeves. On July 12, 2023, Commissioners Van Beek and Brooks conducted a public hearing on this case and subsequently continued it to August 24, 2023, so that Commissioner Holton could participate in the hearing. On August 24, 2023, a Board quorum was not present, so the hearing was continued to today's date, August 31, 2023. Commissioner Holton said he has listened to the audio of the prior hearing and reviewed the information packet. He said at the previous hearing there was wiggle room to reopen the hearing and since there are people in attendance for today's hearing he believes it is prudent to consider opening the hearing for public testimony again.

Deputy PA Zach Wesley said at the previous hearing Commissioners Brooks and Van Beek expressed an interest in having Commissioner Holton participate and they outlined what the process would be for that where he would listen to the audio and review the exhibits so he could participate in the deliberation phase which was the phase they had not completed at that point. They also discussed the potential of having the record reopened if there was any need for additional evidence, for instance, if Commissioner Holton had a question when reviewing the record that wasn't answered he would have the opportunity to ask that question. Mr. Wesley reviewed the process for reopening the record. Commissioner Holton asked staff for an update on exhibits. Planner Debbie Root said they received three late exhibits from the applicant's representative (Exhibit Nos. 13, 14, and 15 at the July 12 hearing), and after the continuance they received two additional letters regarding those exhibits from the public (Exhibit Nos. 16 and 17) for a total of five late exhibits. All three Commissioners were in support of reopening the hearing.

The following people testified in support of the request:

Ammon Andelin stated the process has been frustrating from a developer's standpoint because there have been inconsistencies and delays along the way. They complied with all the agency requirements and once they got in front of the decision-makers they were denied, but they were told what action they could take to gain approval. DSD staff told them to make the corrections and resubmit their application, so they went through the process again only to have more inconsistencies. The County engineer gave a letter of approval and then changed it and said they have to have community well and water. There is a lack of consistency at the Board level, and he sees no legal basis for denial of the application.

Derritt Kerner is the project engineer on this development, and he testified the rezone stands alone as undeniable. The comprehensive plan calls for residential and there are only two ways to comply with that, either through an R-1 option or an R-R option. They were denied the R-1 option and the Board said it would approve an R-R rezone, so they relied upon that guidance and decision and one year later they are back before the Board. The preliminary plat is complementary to an R-R zone; they have jumped through all the hoops, and studied, addressed, and mitigated everything that was asked of them and after two and a half years they are here to obtain their approvals. Additional items to address have come up in recent months, and the process has been long, and they have been patient. The County engineer sent a letter talking about community wells and septics; however, it wasn't in the original application, and it is not supported by code, and it was brought up after the P&Z Commission hearing. With the help of Southwest District Health, they advanced 53 test pits on the site to determine that individual wells and septics are feasible. This is not a nitrate priority area and no advanced septic systems are necessary on the site. They were approved for 53 lots, and they will be in good shape with the lot reduction and the 39 lots.

Attorney Andrea Roshalt testified the applicant is entitled to have their application considered at the time and under the requirements of when they submitted their application and so some

additional or new policy change would not affect that application. Concerning the prior application in 2022, the applicant came before the Board for a conditional rezone and preliminary plat, Case Nos. RZ2021-0046, and SD2021-0038 and their applications were denied. Idaho Code, Section 67-6519 talks about zoning changes and says if the zoning change is denied the hearing body is required to specify the actions, if any, the applicant could take to obtain approval. The Board could state there are no actions they could take, but that wasn't what happened. In this case they stated for the rezone that the applicant could consider a rezone or a conditional rezone to an R-R (rural residential) zone with a two-acre average minimum lot size. Or they could wait until development in the area better supports low-density residential uses. The applicant forewent appealing, they forewent their other options statutorily and worked with planning and zoning and said they will do the rezone and jump through the required hoops. The Board determined there are actions and were actions the applicant could take, and the applicant is entitled to rely on that. There does not appear to be a legal basis to deny the application especially if they have jumped through the hoops the Board required. Following her testimony, Ms. Roshalt responded to questions from the Board.

Commissioner Brooks said this is why he asked at the last hearing if the current Board is beholden to decisions made by a prior Board. Deputy PA Wesley said Idaho Code Section 67-6519 is the general application granting process in the Local Land Use Planning Act, and part 5 of that section states *when a governing board, or planning and zoning commission grants or denies an application it shall specify: a. the ordinance and standards used in evaluating the application; b. the reasons for the approval or denial; and c. the actions, if any, the applicant could take to obtain approval.* Because of the reasons discussed by Commissioner Brooks we have an obligation under LLUPA to give guidance when we deny an application, but things do not stay stagnant. We have Board members that change who may have opinions that are different or see evidence differently, or may interpret the comprehensive plan differently, and so those things can change. The area could change, the comprehensive plan can change. We would not expect a Board that gave those findings 20 years ago to be binding on a Board today and so the County's view is that direction is intended to be general, but it still requires a full application process and convincing the existing Board serving in the quasi-judicial capacity that the application meets all the criteria. We do not believe this is a binding commitment to approve an application under certain conditions or wouldn't assert a thing has occurred for any amount of time. We view it as guidance for the applicant and have said but you still have to go through the process, zoning isn't necessarily permanent, it can always be changed. Commissioner Holton asked staff is there a material change in the application from two years ago and the application today? Are they the same preliminary plat and the same number of lots? Planning Official Lister said their original application was an R-1 zone with a one-acre average minimum lot size, and this application is a two-acre average minimum lot size. Commissioner Holton said he finds that frustrating.

Andrea Roshalt said the change to the two-acre minimum was part of the requirement the Board requested and stated in their order consider a conditional rezone and two-acre average minimum

lot size so that change had to be made pursuant to this Board. They have made changes pursuant to the prior Board's request.

Commissioner Van Beek asked questions for staff specific to Exhibit E within the staff report regarding what the applicant could do to gain approval. She also had questions for legal regarding the way we look at the school district and in providing essential services to the area in the decision-making process.

Darin Taylor testified that Exhibit 5E shows 27 platted subdivisions within one mile of the subject property, and several of them have been approved by this Board. Since receiving the letter from the County Engineer about central water and sewer systems he met with Anthony Lee at SWDH and showed him the letter. He summarized Mr. Lee's comments as follows: The separation distances between septic systems and individual wells are effective in preventing well water interaction with subsurface sewage disposal. He could not think of an instance where they do interact, he could not think of anything specific that a central wastewater system would provide that individual septic systems in good working order do not provide. Mr. Lee did not affirm the County engineer's statement that public health and our groundwater resources would be best protected if development was also served by a central wastewater system. Mr. Taylor met with Dan Smith at DEQ who affirmed water quality standards pertaining to individual wells are being enforced. Regular water sampling and testing is not required of individual domestic wells or private drinking water systems, and he affirmed that the central water systems have regular sampling and testing requirements and continually verify water quality over time, but sampling and testing do not improve water quality. Central wastewater systems require almost daily routine sampling testing, lower allowed contaminant levels, and more stringent disposal requirements and a licensed operator and backup operator which are in short supply with aging current licensed operators. He confirmed individual wells and septic systems have planning, engineering, construction, and testing just like central wastewater systems, just without DEQ's review of each system's construction plans. He said Mr. Smith would not say individual wells and septic systems are not effective or do not work, likewise he would not say a central water system or wastewater system for 39 average two-acre lots would operate better or be more within water quality standards than individual wells and septic systems but that the regular testing and results reported to DEQ would verify it. Mr. Taylor offered this as a potential condition of approval: the applicant will volunteer to a condition to drill at least 200 feet down and to seal individual wells down to the bottom of the casing where the screen or filter attach. Most of the contamination occurs above 200 feet.

Commissioner Van Beek and Commissioner Holton had questions for staff regarding Exhibits 5D and 5E, regarding approved developments in the areas. Discussion ensued. The Board also had follow-up questions for Mr. Taylor.

The following people testified in opposition to the request:

Daniel Richards testified about his concerns regarding wells, septic, water depletion, school security systems and overcrowding issues. The schools are using portable classrooms and he questioned when the housing development is going to stop. He wants the small town feeling of this area to be protected.

Shannon Colson testified that the P&Z Commission unanimously denied this request in January based in good share on a letter from the Middleton school superintendent which stated the school was overcapacity by 123%. According to Ms. Colson, the entire 4th and 5th grade classrooms are outside of the building, and she said they cannot keep adding portables and say the issue has been mitigated. It's a band-aid, it does not solve the problem. This development will add to the overcrowding issue at the schools.

Allen Colson testified that the additional exhibits that were submitted do not show any extra mitigation by the applicant. They are examples of what could be done, but not by the applicant. One talked about an article from Vallivue and how a third party helped them; that's Vallivue School District, not Middleton, and there is nothing from the applicant saying it has been mitigated. The applicant has not made a commitment to the schools. Traffic should be addressed at the intersection of Purple Sage and Lansing where there have been three recent fatalities. The applicant talked about a bus stop for their development to mitigate some of the school and traffic issues, but that does not address the other kids who are standing on those roads. Mr. Colson said the Willowbrook Development was annexed into Star, but no Canyon County property was annexed at that time so at this point it's at a standstill. He said the Board's FCOs for the 2022 case referred to a minimum of two acres, not an average of two acres.

Planner Deb Root said there are several lots that are under two acres. Planning Official Lister addressed the applicant's frustrations that were mentioned earlier. Staff worked with the applicant and initially recommended approval of the application, but the evidence that came in through testimony and letters swayed the P&Z Commission to not follow staff's recommendation. The findings were based on services and the cumulative impact of the development to the area of the intersection of Lansing and Purple Sage. It was the same information about lots, and what was cumulatively approved in the area without looking at the traffic or schools at that time. There was also a review of the recent decisions and what was shown was over 200 new lots had been added through rezone or platting that had not addressed the cumulative impacts. There is no traffic study. There is mitigation but the timing was unclear as to when the development comes in will it really develop at the same time the improvements will be done? The school district submitted a letter saying it is not ready for this type of development. The P&Z Commission said those things need to be addressed before it can make the findings. Based on the review, staff does not see a change in the findings. Regarding the engineer's comments, they are recommendations. The plat does meet requirements for well and septic but the engineer is providing information about the benefits to a community system.

Rebuttal testimony was offered by Darin Taylor. The subject property is adjacent to the Middleton impact area along the entire south boundary, and there are 9 lots less than 2 acres in the proposed subdivision. The proposed zoning is R-R and Canyon County Code allows for an average lot size of two acres in the R-R zone. The school district added portables that relieved the overcapacity issue and increased capacity (Exhibit No. 14). Technically the portables occupied a lawn area, but the playground area was not functionally diminished. Exhibit No. 13 is a letter from the building contractors association that helped the Vallivue School District gain approval by increasing awareness of the election and increasing the encouragement to vote. The applicant has volunteered to use that same group and try to effect the same change through Middleton. They met with Superintendent Gee and offered to buy more portables, but he said he doesn't need more portables; he said he would like help getting a school bond passed which is why the applicant brought up the letter. Traffic is being improved along State Hwy 44. They are adding lanes and lane width to I-84 and working their way west, but right now they are in downtown Star. There has been a lot of discussion of the intersection of Purple Sage and Lansing; the accident reports are driver caused (running stop signs, or inattentive drivers and misjudging time). The plat complies with the code, and the zoning matches the area and the applicant has done everything they can to conform to agency requests. Following his testimony, Mr. Taylor responded to questions from the Board.

Upon the motion of Commissioner Holton and the second by Commissioner Brooks, the Board voted unanimously to close public testimony. The Board's deliberation was as follows:

Commissioner Van Beek said we are operating under the 2020 comprehensive plan and with the requested zone change this indicates the proposed zoning map is generally consistent with the 2020 comprehensive plan. It appears to be an area of transition, there is still farming out there, but it does appear to be changing. Commissioner Brooks agrees that it is an area in transition. Commissioner Van Beek said there is legal access, and she acknowledged the traffic impact study, but she does not know how to interpret the findings submitted by CR Engineering. The conclusions states Canyon Highway District finds that traffic impacts can be addressed by requiring right-of-way dedications, frontage improvements, internal road improvements and development impact fees, cumulative impacts to the existing road systems are not adequately addressed. She travels the area frequently and what's difficult is the amount of growth in the area, particularly along Hwy. 44 where there are death traps where dirt roads come onto a 55-mph highway. To say the road systems are not adequately addressed and then to not require a traffic study is transferring the responsibility to people that may not have as much information. Commissioner Holton finds the challenge of this application is the inability to impose conditions, and the changes in administrative lot splits in and of themselves were very difficult to be measurable and this development is measurable. There will be 39 improved lots and the resulting traffic, and the cumulative effect troubles him. There is not much connectivity going north so the majority of the traffic is going south but they will look for the fastest way to go east or west to go south and so all those connector roads will be impacted and he did not receive any specific testimony that they acknowledge it will cause an impact or that they will mitigate the impacts. Commissioner Van

Beek said the intersection of the development properties is a safety issue and there are amenities on the buildout of a community that takes long-term planning, and it relates to the issue of timing. Timing should trigger some inclusion so that there is an interface. Commissioner Brooks had questions for staff regarding the number of parcels that have been approved in the area. Planning Official Lister said within a one-mile radius, and it was a mix between rezones, preliminary plats, and one CUP for a specialty events facility and what came out of it was a locked down number of lots or what could be allowed through that rezone, and it came up to 215. Commissioner Van Beek said the County and the city are interested in quality development and she questions how we regulate that because if the city goes out far enough it's not even in our control and this doesn't take into consideration the development. There is additional largescale development planned for Middleton across the river that will have a significant impact too, but that's within the city. If this were to be included in the city and it was annexed it would not have 2-acre lots, it would be a much higher density. She is not convinced that the community well and septic are better than individual wells, particularly when there is a condition to seal the well casing. She asked if the Board could attach a development agreement to the application and provide conditions through that vehicle, and that if the Board were to make positive findings and overturn the P&Z Commission's decision would it go to a third hearing? Deputy PA Wesley said if the Board were to require conditions through a development agreement it would have to go back through the P&Z Commission because they haven't heard those terms yet. There have been other times where the Board has put a development agreement in place between the approval hearings. Yes, the Board could ask for a development agreement for mitigation measures; it would require an additional hearing, but it would also require the applicant to be willing to do that. If the applicant is asking for a straight rezone with no conditions and all the criteria cannot be met without mitigation then you are left without any tools. If the Board approves this a second de novo hearing will be required because it would be overturning the P&Z Commission's decision. Commissioner Van Beek said there have been some changes in the area but the criteria that was lined out, on the FCO's for SD2021-0038, they could potentially receive approval of the zoning map amendment, but on the timing the property is not located within an area of city impact. There was never an approval by the P&Z Commission or the Board that guaranteed approval. The timing criteria for gaining approval never materialized because it was not included, but had it been included then it would have entirely changed the nature and character of the area because it would be a city development project. She is not sure that was fair. Commissioner Holton said the original application is not the same as the application they are focusing on today. There is a cumulative impact on the existing road system that is not adequately addressed. The proposed zoning map amendment will negatively affect the character of the area because this is 90 acres that will suddenly go to a 2-acre development and there is nothing that big in the area. The request will change the character of the area. Commissioner Van Beek doesn't disagree but said if you look at the number of lots and the average lot size, some are down to one acre and it's a mix of everything out there. Commissioner Brooks said with everything that's been approved he could see where it would not negatively affect the area, but because it's not a conditional rezone the Board cannot impose conditions. The road situation is going to be a problem with what has already been approved and

with what would be added to it. Commissioner Van Beek asked if a development agreement can be legally binding as a condition? Deputy PA Wesley said it's not a conditional rezone; the Board would be saying it could only approve it as a conditional rezone and then whether it puts that as what the applicant could do to gain approval after a denial and send them back to the P&Z Commission to start the process over again, or if you negotiate conditions and see if the applicant is willing to go along with a development agreement today then we could put that together for a second hearing. Commissioner Brooks said he has no intention of negotiating. Commissioner Van Beek said she believes that adequate measures have not been taken or included. This is one of the fastest growing areas in Canyon County and that's going to be tough particularly given that as we try to improve our processes and what that interface looks like between the County and city development that would be a problem. Regarding impacts to the schools, she said there are pods, but that it is problematic. Commissioner Brooks said the schools are already full and there are other lots that have not been built out. Commissioner Van Beek said there is a community that has found a way to work with developers, and a quality builder increases the desirability of that area for growth and development by working with them to gain financial momentum on getting those services in place that are essential. We want safe and well-developed communities. The area is in transition. The issue of cumulative effect is critical. Commissioner Holton said he is not finding adequate new testimony to substantiate a different position. Commissioner Brooks made a motion to deny Case No. RZ2022-0011, a request for a zoning map amendment from "A" to "R-R" for parcel no. R37496. The motion was seconded by Commissioner Van Beek. Commissioner Holton asked if the Board agrees that pursuant to Idaho Code, Section 67-6519 that the following actions could be taken to possibly obtain approval: 1. Reapply for a zoning map amendment or conditional rezone once the following has occurred:

- a. Middleton School District capacity impacts are adequately addressed or minimized through Middleton School District-approved mitigation measures.
- b. Site access/Purple Sage Road and Lansing Lane/SH-44 improvements are constructed and completed to adequately address cumulative impacts.

Commissioner Brooks said for 1. a. that would more than likely require action outside of the applicant's doing, and he questioned how to have them adequately address that unless they are building a school themselves. Commissioner Van Beek said her second would include those two actions. The motion carried unanimously. Commissioner Holton said Finding No. 14 for Case No. SD2022-0034 must be amended to include today's hearing date. He also read Finding No. 15 into the record. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to deny Case No. SD2022-0034, the preliminary plat for Mint Farm Estates Subdivision. Commissioner Holton referred to the language in the FCO's that advises what actions may be taken to obtain approval, which is to reapply when a zoning map amendment or conditional rezone has been approved. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to adjourn. The hearing concluded at 3:37 p.m. An audio recording is on file in the Commissioners' Office.